

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its)	Docket No. NG-0051/PI-130
own motion, to investigate jurisdictional)	
issues pertaining to construction and)	
operation of a natural gas pipeline)	Comments of the
within the State of Nebraska by)	Nebraska Municipal Power Pool
Nebraska Resources Company, LLC,)	
or any other entity.)	

COMMENTS OF THE NEBRASKA MUNICIPAL POWER POOL ("NMPP")

By its July 24, 2007, order opening a docket and requesting written comments, the Nebraska Public Service Commission ("Commission") is investigating the jurisdictional issues pertaining to construction and operation of a natural gas pipeline within the State of Nebraska by Nebraska Resources Company, LLC, ("NRC") or any other entity.

The Nebraska Municipal Power Pool ("NMPP") submits the following comments for the Commission's consideration regarding the jurisdictional issues pertaining to construction and operation of a natural gas pipeline within the State of Nebraska.

BACKGROUND

NMPP is a Nebraska nonprofit corporation representing the interest of nearly 200 communities across seven Midwestern and mountain states. NMPP supports community-owned utilities governed at the local level, directly accountable to the citizens they serve. Since 1975, NMPP has been striving to encourage competition and empower local governments. It has a core philosophy of local control.

NMPP Energy is a trade name for member-owned organizations providing electricity, natural gas and utility related services. NMPP Energy consists of four entities: Municipal Energy Agency of Nebraska (MEAN), a wholesale electricity supply organization; National Public Gas Agency (NPGA®), a wholesale natural gas supplier; Public Alliance for Community Energy (ACE), a retail natural gas supplier, and the Nebraska Municipal Power Pool (NMPP), a utility-related services provider.

On behalf of NMPP we appreciate the opportunity to offer preliminary comments, recommendations and supporting information on the investigation. NMPP staff has met with the City of Norfolk, NRC and Seminole Energy. NMPP is familiar with Seminole Energy and is very supportive of the NRC Pipeline. However, NMPP understands that the scope of the investigation is not restricted solely to the project proposed by NRC. In addition, NMPP does not wish to become a party in these proceedings and understands that this is now considered a contested case declared in order NG-0051/PI-130.

The Commission is seeking comments on the following issues:

- 1. Does the definition of “high-volume ratepayer” in *Neb. Rev. Stat. Sec. 66-1802(7)* include LDCs with volumetric demand in excess of 500 therms per day?**

As one of the supporters which aided in drafting LB 790 in 2003, it is NMPP's view that “high-volume ratepayer” in *Neb. Rev. Stat. §66-1802(7)* was not intended to encompass LDCs with volumetric demand in excess of 500 therms per day. The original intent of the legislation was that the high-volume ratepayer would be an end-use customer not an entity engaged in retail sales of natural gas. We defer to the Nebraska Legislature's definition of high-volume ratepayer and note that in *Neb. Rev. Stat. §66-1803(2) (2003)* where the term is used again with:

“Any ratepayer **or city** served by a natural gas public utility pursuant to subsection (1) of this section, the Commission...may pursue an action in the district court of the county in which such utility operates for a determination as to whether or not such utility is subject to the jurisdiction of the Commission and the requirement of the act by reasons of the failure to meet one or more of the qualifying factors set out in section (1) of this section.”

NMPP recognizes that the legislature would not have added “or city” if an LDC was included in the ratepayer definition.

2. Does Nebraska's double-piping prohibition under *Neb. Rev. Stat. Sec. 66-1852* apply to a pipeline providing a new interconnection to an LDC?

No. NMPP supports this view for several reasons. A new interconnection by an interstate or intrastate pipeline to an LDC, municipal gas system or industrial end-user backed by contracts most certainly demonstrates that the pipeline capacity is needed, not duplicative and not redundant. The Nebraska Revised Statutes §66-1852 states,

“Except as otherwise expressly authorized in the State Natural Gas Regulatory Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.”

The double-piping prohibition under *Neb. Rev. Stat. §66-1852* does not apply to a pipeline providing a new interconnection to an LDC. *Neb. Rev. Stat. §66-1852* specifically mentions the construction of “natural gas mains and other natural gas services into an area which already has existing natural gas *utility* infrastructure.” [Emphasis added.] The definition of “natural gas public utility” in *Neb. Rev. Stat. §66-1802(11)* explicitly excludes interstate pipelines.

It would do a disservice to the citizens of Nebraska to prohibit additional natural gas pipelines to be constructed in the State of Nebraska, thus limiting LDC's, municipal gas systems and industrial end-users from benefiting from competition supported by access to additional natural gas supply basins. Wholesale competition forces companies to offer fair prices and maintains the integrity of the local market price.

3. Does the Commission have jurisdiction over an Application under *Neb. Rev. Stat. Sec. 66-1853(1)* for a Certificate of Public Convenience to operate as a “jurisdictional utility” a pipeline located wholly within the State of Nebraska to deliver natural gas to LDCs and other customers?

Yes. In order to decide whether it has jurisdiction over the pipeline, the Commission must consider the Hinshaw Amendment found in the Federal Natural Gas Act, 15 U.S.C. Subsection 717(c). The Hinshaw Amendment carves out an exception to FERC jurisdiction for natural and legal persons engaged in the transportation of “natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such state.” We believe the “Hinshaw pipeline exception” applies and this interpretation gives the Nebraska Public Service Commission authority.

In United States case law, FERC interpreted the Hinshaw Amendment “drawing the line of demarcation between Federal and State regulation at the point when the intrastate company receives the gas from an interstate shipper.” See *Oklahoma Natural Gas Co. v. FERC*, 28 F.3d 1281, 1283-84 (D.C. Cir. 1994) and 76 F.E.R.C. p 61300 at 62,495. This interpretation certainly accords with the plain meaning of the statutory words, “received by such person from another person.” The Hinshaw Amendment means that when an intrastate pipeline receives gas from an interstate pipeline within or at the border of its state, jurisdiction switches from FERC to the state. Congress did not want a regulatory “gap” and with the PSC jurisdiction there is no such gap but, on the contrary, an express congressional reservation of jurisdiction to another body.

Furthermore, pursuant to Nebraska Law, the Commission has jurisdiction over an Application under *Neb. Rev.Stat. §66-1853(1)* for a Certificate of Public Convenience to operate as a “jurisdictional utility” a pipeline located wholly within the State of Nebraska to deliver natural gas to LDCs and other customers. Provided that the pipeline does not meet the specifications set forth in *Neb. Rev. Stat. §66-1803(1)*, the pipeline is a jurisdictional utility and as such, subject to the jurisdiction of the Commission.

The Commission is the best body to exercise jurisdiction over a pipeline located wholly within the State of Nebraska. Members of the Commission and citizens of the state have an interest in when, whether and how the proposed pipeline is to be built. If the regulatory process were to take place outside of Nebraska, it would be expensive to both the citizens of Nebraska interested in the pipeline and the company proposing to construct the pipeline. Those costs experienced by the company owning the pipeline would most likely be passed along to Nebraska consumers. The Commission is quickly gaining experience determining issues in the natural gas field, and have ensured that the citizens of Nebraska are heard.

4. What other regulatory authorities, including state, federal and local governing bodies of any kind would have jurisdiction over the proposed NRC Pipeline, and what is the scope of their review.

The State Fire Marshal would have jurisdiction over pipeline safety derived from the Natural Gas Pipeline Safety Act of 1969.

If Federal Jurisdiction is deemed to apply, the Office of Pipeline Safety and the U.S. Department of Transportation would have authority over operational safety of the pipeline. A Hinshaw pipeline can unquestionably come under FERC authority when it engages in activities that go beyond the intrastate transport of natural gas.

We appreciate the opportunity to provide these comments, and we look forward to working with the Commission on these important issues. Please do not hesitate to contact me, or ask your staff to do so, at 402-474-4759.

DATED this 6th day of September, 2007.

Respectfully submitted,



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